IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1262 OF 2004

Laxmibai @ Tanubai w/o. Govind
Gaikwad & Ors. ..Appellants

versus

Genu Sambhaji Adhangale & Ors. ..Respondents

Mr. P. N. Joshi for the Appellants.
None for the Respondent No.3.

CORAM : D. G. DESHPANDE,J.

DATE : 15TH SEPTEMBER,2005

ORAL ORDER :

1. Heard Advocate for the Appellants. Respondent No.3 is present. Nobody is present for him.

2. Appellants are the plaintiffs. They filed a suit for partition of the property. In that suit all property was included excepting Gat No. 340. It was the case of the defendants that there was oral partition between the parties and Gat No. 340 was given to the share of the plaintiffs who are the legal heirs of Mohana. The defendants are the sons

of Sambhaji. There were two brothers Sambhaji and Mohana, their father being Shiva. The suit of the plaintiffs was decreed by the trial court and other side preferred appeal. The appellate court allowed the appeal and therefore the plaintiffs have filed the second appeal.

3. Advocate for the appellants repeatedly urged that Gat No.340 was totally different and distinct property and has nothing to do with the family. However, from the document on record, he contended that even if Gat No. 340 was the family property, there is no document about the so-called oral partition nor it is supported by the revenue entries.

4. Once it is admitted that Gat No. 340 is the property of Shiva, and Mohana the father of the present appellants exercised his right of ownership over the said property and bequeathed his title to one of his daughter Anarkali, then it is a direct admission of the fact that there was oral partition. This circumstance itself proves the contention of the defendants that there was an oral partition and that it was acted upon and Mohana exercised his right of ownership over that Gat No.340.

5. This is nothing but an attempt by the

plaintiffs to lay their claim on tenanted property. There is no substance in the contention of the appellants that theory of partition is not supported by the document or revenue entries. There may be or may not be a document or revenue entry, but the fact of Moahana exercising right of ownership and bequeathing the property to one of his daughters i.e. Gat No.340 was rightly held by the lower appellate court to be the direct clinching evidence and proof of partition. There is no merit in this Appeal, it is dismissed.

15.9.2005 (D.G. DESHPANDE, J.)